

SUPREME COURT OF THE STATE OF NEW YORK,
TRIAL DESIRED IN NEW YORK COUNTY.

GEORGE MAXWELL,

Plaintiff,

-against-

COLUMBIA PHONOGRAPH COMPANY
GENERAL,

Defendant.

Summons with Notice.

To the above named Defendant

You are hereby Summoned to answer the complaint in this action, and to serve a copy of your answer on the Plaintiff's Attorney within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear, or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated--January 18th 1913.

NATHAN BURKAN

Plaintiff's Attorney

Office and Post office address,
No 165 Broadway,
Borough of Manhattan,
City of New York.

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SUPREME COURT OF THE STATE OF NEW YORK,
TRIAL DESIRED IN NEW YORK COUNTY.

GEORGE MAXWELL,

Plaintiff,

:

-against-

COLUMBIA PHONOGRAPH COMPANY GENERAL,
Defendant.

:

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The plaintiff complains and alleges:-

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I: On information and belief: That at all the times hereinafter mentioned the defendant was and now is a corporation organized and existing under the laws of the State of West Virginia.

II: On information and belief: That at all the times hereinafter mentioned Fonotipia Limited was a corporation duly organized and existing under the laws of the United Kingdom of Great Britain and Ireland.

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III: On information and belief: That at all the times hereinafter mentioned Societa Italiana di Fonotipia was a corporation duly organized and existing under the laws of Italy and was subsidiary to and controlled by said Fonotipia Limited.

IV: That at all the times hereinafter mentioned Alessandro Bonci was an opera singer of world-wide reputation.

V. On information and belief: That heretofore the said Alessandro Bonci entered into three agreements with the said Societa Italiana di Fonotipia, dated respectively the 11th day of January, 1905, the 5th day of May, 1906, and the 17th day of October, 1907, by which agreements the said Alessandro Bonci agreed for and during a period of years extending beyond the year 1913, to sing exclusively for said Societa Italiana di Fonotipia for the purpose of making phonograph or talking machine records of his singing, and during said period not to sing for any other person, firm or corporation for the purpose of making such records, and by which agreements the said

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Societa Italiana di Fonotipia acquired for said period the sole right to make and sell phonograph or talking machine records of any musical composition sung by said Alessandro Bonci. That thereafter, by virtue of certain agreements made between the said Societa Italiana di Fonotipia and the said Fonotipia Limited, the said Fonotipia Limited acquired for said period the exclusive right to sell phonograph and talking machine records of the singing of said Alessandro Bonci in the countries of South America and other countries.

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VI: On information and belief: That on or about the 4th day of June, 1912, the defendant proposed and offered to said Fonotipia Limited that it, the defendant, would pay the sum of Ten thousand Dollars (\$10,000) to said Fonotipia Limited upon said Fonotipia Limited procuring a release releasing said Alessandro Bonci from said agreements made between him and said Societa Italiana di Fonotipia as aforesaid, and upon said Fonotipia Limited agreeing not thereafter to sell anywhere any previously made phonograph or talking machine records of the singing of said Alessandro Bonci at lower prices than those listed in its existing catalogues or at any lower prices than those at any time charged by the defendant.

6

VII: On information and belief: That thereafter and on or about the 24th day of August, 1912, the said Fonotipia Limited proposed and offered to the defendant that it, said Fonotipia Limited, procure the release of said Alessandro Bonci from his said agreements made with said Societa Italiana di Fonotipia as aforesaid, and that it, said Fonotipia Limited, agree that the prices at which it will sell its existing phonograph and talking machine records of the singing of said Alessandro Bonci in any of the countries of South America, shall not be lower than the catalogue prices that may be established by the defendant from time to time for the sale

7 in said countries of such records of the singing of said
Bonci, provided, however, that such prices of the defendant
shall not at any time exceed those appearing in the catalogue
of said Fonotipia Limited on said 24th day of August, 1912,
and provided further, that said Fonotipia Limited shall be at
liberty to sell its then existing phonograph and talking machine
records of the singing of said Bonci in any part of the world,
excepting the countries of South America, at any prices which
it may consider to be in its interest, and that upon said
8 Alessandro Bonci being released from his said agreements the
defendant pay to said Fonotipia Limited the sum of Ten thousand
Dollars (\$10,000.00).

VIII: On information and belief: That thereafter and
on or about the 5th day of September, 1912, the defendant
accepted the said offer and proposal made by said Fonotipia
Limited on the 24th day of August, 1912, as aforesaid, and it
was then and on said 5th day of September, 1912, agreed by and
between the defendant and said Fonotipia Limited, that the said
9 Fonotipia Limited procure the release of said Alessandro Bonci
from his said agreements with said Società Italiana di Fonotipia,
and that the prices at which said Fonotipia Limited will sell
its existing phonograph and talking machine records of the singing
of said Alessandro Bonci in any of the countries of South America,
shall not be lower than the catalogue prices that may be
established by the defendant from time to time for the sale in
said countries of such records of the singing of said Bonci,
10 provided, however, that such prices of the defendant shall not
at any time exceed those appearing in the catalogue of said
Fonotipia Limited on said 24th day of August, 1912, and
provided further, that said Fonotipia Limited shall be at
liberty to sell its then existing phonograph and talking machine
records of the singing of said Bonci in any part of the world,
excepting the countries of South America, at any prices which it

may consider to be in its interest; and that upon said Alexander Bonci being released from his said agreements made with said Societa Italiana di Fonotipia, as aforesaid, the defendant will pay to said Fonotipia Limited the sum of Ten thousand (\$10,000.00) Dollars.

11 IX: On information and belief: That thereafter and on or about the 12th day of September, 1912, the said Fonotipia Limited, in pursuance of said agreement, duly procured the said Societa Italiana di Fonotipia to make an agreement with said Alessandro Bonci whereby the said Bonci was from and after said 12th day of September, 1912, released from the said agreements made between him and said Societa Italiana di Fonotipia and dated respectively the 11th day of January, 1905, the 8th day of May, 1906, and the 17th day of October, 1917.

12 X: That thereafter, the said Fonotipia Limited notified the defendant that in pursuance of said agreement of September, 5th, 1912, it had procured the said Alessandro Bonci to be duly released from his said agreements with the said Societa Italiana di Fonotipia, and that said Alessandro Bonci had been released from his said agreements by said agreement made between the Societa Italiana di Fonotipia and said Bonci, on the 12th day of September, 1912, and the said Fonotipia Limited then and there demanded of the defendant the payment to it by the defendant of the sum of Ten thousand dollars(\$10,000.00).

13 XI: On information and belief: That the said Fonotipia Limited duly performed all the terms on its part to be performed of said agreement made between it and the defendant as aforesaid, and on said 12th day of September, 1912, there was due and owing from the defendant to said Fonotipia Limited the sum of Ten thousand Dollars (\$10,000.)

XII: That the defendant has failed and refused to perform

its part of said agreement and has not paid the said sum of Ten thousand Dollars (\$10,000) nor any part thereof,

14 XIII: That thereafter and before the commencement of this action, the said Fonotipia Limited, for a valuable consideration, duly assigned to the plaintiff the said agreement made between it and the defendant as aforesaid and all its right, title and interest in the said sum of Ten thousand Dollars (\$10,000) with interest, and all its claim and demand against the defendant as above set forth.

XIV: That no part of said sum of Ten thousand Dollars (\$10,000) has been paid, and the whole thereof is now due and owing by the defendant to the plaintiff, with interest thereon from the 12th day of September, 1912.

15 WHEREFORE, plaintiff demands judgement for the sum of Ten thousand Dollars (\$10,000.00) with interest thereon from the 12th day of September, 1912, and the costs of this action.

NATHAN BURKAN,
Attorney for Plaintiff,
165 Broadway,
Borough of Manhattan,
New York City.

STATE OF NEW YORK,
City and County of New York) ss:

George Maxwell being duly sworn, deposes and says that
he is the plaintiff in the within entitled
action; that he has read the foregoing complaint and knows the
contents thereof; that the same is true to his own knowledge,
except as to the matters therein stated to be alleged on
information and belief, and that as to those matters he believes
it to be true.

Sworn to before me this 20) George Maxwell
day of January 1913)

(Seal)

N. Y. County#50 George Stoll,
N. Y. Register's Notary Public, Westchester County
No.4185 Certificate filed in New York County.

*Copy of Fonotipia release to Columbia
not carried out-*

MEMORANDUM OF AGREEMENT made the

day of One thousand nine hundred and twelve BETWEEN
Fonotipia Limited a Company registered under the English
company laws whose domicile is at 1 Broad Street Place London
E.C.(hereinafter called "Fonotipia") and the Columbia Phonograph
Company General a company incorporated under the United States
company laws whose chief office is at Tribune Building, New York
(hereinafter called "Columbia") WHEREAS Columbia has requested
Fonotipia to release the tenor Alessandro Bonci from his obligations
under an agreement with the Societa Italiana di Fonotipia, a company
formed under the Italian company laws and entirely controlled and
owned by Fonotipia Limited, which Fonotipia has agreed to do
subject to the provisions hereinafter contained and WHEREAS
Columbia has upon the signing of this agreement paid to Fonotipia
the sum of Ten thousand dollars (the receipt where Fonotipia hereby
acknowledges) NOW IT IS HEREBY AGREED AS FOLLOWS:

1. All records made by Bonci under his existing agreement with
the Societa Italiana di Fonotipia shall remain the absolute and
exclusive property of Fonotipia or such other person, firm or
company for whom such records were made and Fonotipia and such other
person, firm or company shall have full right to sell, use,
reproduce and otherwise deal with the same in any way whatsoever.
2. Fonotipia shall be at liberty to sell the existing records
made by the tenor Bonci under his agreement with the Societa
Italiana di Fonotipia at any price which may be considered in its
interest in any part of the world with the exception of the South
American republics where the catalogue prices of Fonotipia shall
not be lower than the catalogue prices established by Columbia
from time to time for records made by the tenor Bonci provided
and it is hereby agreed that such prices shall not at any time
exceed those at present appearing in the Fonotipia catalogue to wit:
15 Lires for double faced records of 27 c/m diameter \$2.89 U.S.Gold.
20 Lires for double faced records of 30 c/m diameter \$3.86 U.S.Gold.
25 Lires for single faced records of 35 c/m diameter \$4.82 U.S.Gold.

3. The tenor bonci is hereby released from all obligations under his agreement with the Societa Italiana di Fonotipia.

4. This agreement shall take effect as from the fifteenth day of September One Thousand nine hundred and twelve.

As WITNESS the hands of the parties hereto the day and year first above written.

Fol. 1.

September, 1912, released from the said agreements made be-
S U P R E M E C O U R T
NEW YORK COUNTY.

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GEORGE MAXWELL,
Plaintiff,

-against-

ANSWER.

COLUMBIA PHONOGRAPH COMPANY (GENERAL),
Defendant.
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The said defendant, on information and belief,
answers the complaint in the above entitled action, as follows:

2.

F I R S T.

1. It admits the allegations in paragraph I thereof.
2. It denies that it has any knowledge or informa-
tion sufficient to form a belief as to the allegations in
paragraph II thereof.

3. It denies that it has any knowledge or informa-
tion sufficient to form a belief as to the allegations in
paragraph III thereof.

4. It admits the allegations in paragraph IV there-
of.

3.

5. It admits the allegations in paragraph V thereof.
6. It denies each and every allegation in para-
graph VI thereof.

7. It denies each and every allegation in paragraph
VII thereof, not hereinafter expressly admitted.

8. It denies each and every allegation in paragraph
VIII thereof.

9. It admits that on or about the twelfth day of
September, 1912, the Societa Italiana di Fonotipia made an
agreement with Alessandro Bonci whereby, in consideration of
42,000 Lire paid or promised to be paid to it by the said
Bonci, the said Bonci was from and after said twelfth day of

Fol. 4.

September, 1912, released from the said agreements made between him and the said Societa Italiana di Fonotipia, and dated respectively the eleventh day of January, 1905, the eighth day of May, 1906, and the seventeenth day of October, 1907.

It denies, however, that the said release was pursuant to the agreement alleged in the complaint, or any agreement between the Fonotipia Limited and the defendant Columbia Phonograph Company (General), and except as thus admitted it denies each and every other allegation of paragraph IX of said complaint.

5.

10. It admits that Fonotipia Limited gave the notice and made the demand substantially as alleged in paragraph X thereof.

11. It denies each and every allegation in paragraph XI thereof.

12. It admits that it has not paid the \$10,000. referred to in paragraph XII thereof, but denies that it ever made any agreement to pay the same.

6.

13. It denies that it has any knowledge or information sufficient to form a belief as to the allegations in paragraph XIII thereof.

14. It denies that the sum alleged in paragraph XIV thereof, or any other sum, is due and owing by defendant to plaintiff.

S E C O N D .

And further answering, by way of defense and for any other purpose for which the same may be material, the defendant alleges:

1. That at the times mentioned in the complaint, prior to the twelfth day of September, 1912, Alessandro Bonci was under certain agreements with the Societa Italiana di

Fol. 7. Fonotipia, as alleged in paragraph V of the complaint.

2. That dissatisfaction, dissensions and litigation had arisen between the said parties, and the said Bonci was desirous of terminating his relations with the said Societa Italiana di Fonotipia, and making arrangements to sing for this defendant, and this defendant was willing to enter into a contract with said Bonci subject to his being free to do so; and the said Societa Italiana di Fonotipia was desirous to sell his release, and valued such release at the sum of ten thousand dollars.

8. 3. That during the time specified in the complaint, and prior to the twelfth day of September, 1912, the said Societa Italiana di Fonotipia entered into negotiations with the said Bonci to sell him his release for the equivalent of \$10,000. in Italian money, and an agreement was consummated on the said twelfth day of September, 1912, and the said Bonci released as aforesaid.

9. 4. That during the time specified in the foregoing paragraph one Emil Rink, claiming to be an agent of the Fonotipia Limited and that the said Fonotipia Limited controlled the said Societa Italiana di Fonotipia, without disclosing that the latter was endeavoring to obtain the said equivalent of \$10,000. from Bonci as aforesaid, negotiated with this defendant and sought to arrange for the execution of a formal written agreement between this defendant and the said Fonotipia Limited, providing for payment by the former of the said sum of \$10,000. and execution by the latter of the release aforesaid, and for matters incidental thereto; and certain tentative and conditional propositions were exchanged, but no meeting of minds was ever reached, and no such written agreement was ever executed, and all such negotiations were broken off and terminated by the conclusion of the negotiations, and the execution of the agreement between the Societa Italiana di Fonotipia and Bonci, on the twelfth day of Septem-

Fol. 10.

ber, 1912, as aforesaid; and in this action it is sought to receive the consideration, for the agreement last mentioned, twice, from this defendant as well as from said Bonci.

W H E R E F O R E, the defendant prays that the complaint may be dismissed, and that it may have judgment against the plaintiff with costs.

By its attorney,

ELISHA K. CAMP,
Office & Post Office Address,
154 Nassau Street,
Borough of Manhattan,
New York City.

State of New York)
City and County of New York) ss.:

EDWARD D. EASTON, being duly sworn, deposes and says: That he is the President of the Columbia Graphophone Company, which prior to January 23, 1913, was known as the Columbia Phonograph Company (General), the corporation defendant in the above entitled action. That the foregoing answer is true to the knowledge of this deponent, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true. That the reason why this verification is made by deponent is because the defendant is a corporation; that the grounds of deponent's belief as to all matters in said answer, not stated upon his knowledge, are investigations which deponent has caused to be made concerning the subject matter of this action, and information acquired by deponent in the course of his duties as an officer of the corporation defendant in this action.

Sworn to before me this
10th day of March, 1913.

) Edward D. Easton

Ralph L. Sutt
Notary Public No 14
New York County

(Seal)